

SUPERIOR COURT OF ARIZONA  
MARICOPA COUNTY  
10/30/2001

\*\*\* FILED \*\*\*  
11/14/2001  
CLERK OF THE COURT  
FORM L000

HONORABLE MICHAEL D. JONES

P. M. Espinoza  
Deputy

LC 2001-000419  
Docket Code 512 Page 1  
FILED: \_\_\_\_\_

STATE OF ARIZONA  
v.  
LORNA LARSEN

JOHN P TATZ

DAVID W DAVIS

PEORIA CITY COURT  
REMAND DESK CR-CCC

MINUTE ENTRY

PEORIA CITY COURT  
Cit. No. #0056726  
Charge: A. FAILURE TO STOP FOR A RED TRAFFIC LIGHT  
DOB: 12/28/63  
DOC: 04/19/01

This Court has jurisdiction of this appeal pursuant to the Arizona Constitution Article VI, Section 16, and A.R.S. Section 12-124(A).

This matter has been under advisement and the Court has considered and reviewed the record of the proceedings from the trial Court, exhibits made of record and the Memoranda submitted.

In her memorandum, Appellant includes as an exhibit a recorded statement of witness, Dorothy Dickey made to an American Family Insurance Adjuster. Counsel for Appellant offers this to illustrate differences in Ms. Dickey's testimony and her recorded statement. However, as counsel should well know, this Court cannot consider new evidence which was not presented to the trial judge for purposes of appeal. Therefore, the allegations that Dorothy Dickey's statements were inconsistent are without merit.

The primary issue raised by the Appellant concerns the sufficiency of the evidence to warrant the conviction and finding of responsibility. When reviewing the sufficiency of the evidence, an appellate court must not re-weigh the evidence to determine if it would

reach the same conclusion as the original trier of fact.<sup>1</sup> All evidence will be viewed in a light most favorable to sustaining a conviction and all reasonable inferences will be resolved against the Defendant.<sup>2</sup> If conflicts in evidence exists, the appellate court must resolve such conflicts in favor of sustaining the verdict and against the Defendant.<sup>3</sup> An appellate court shall afford great weight to the trial court's assessment of witnesses' credibility and should not reverse the trial court's weighing of evidence absent clear error.<sup>4</sup> When the sufficiency of evidence to support a judgment is questioned on appeal, an appellate court will examine the record only to determine whether substantial evidence exists to support the action of the lower court.<sup>5</sup> The Arizona Supreme Court has explained in *State v. Tison*<sup>6</sup> that "substantial evidence" means:

More than a scintilla and is such proof as a reasonable mind would employ to support the conclusion reached. It is of a character which would convince an unprejudiced thinking mind of the truth of the fact to which the evidence is directed. If reasonable men may fairly differ as to whether certain evidence establishes a fact in issue, then such evidence must be considered as substantial.<sup>7</sup>

This Court finds that the trial court's determination was not clearly erroneous and was supported by substantial evidence.

Appellant also alleges as error the fact that two witnesses were subpoenaed by the State and failed to appear. However, Appellant also had the right to subpoena witnesses to testify at the hearing. Appellant could have moved to continue the hearing and ask the court to issue civil arrest warrants for the arrest of those witnesses who failed to respond and appear pursuant to their subpoenas. Appellant did not do this. This Court finds no error by the trial court in proceeding.

IT IS ORDERED affirming the judgment of responsibility and sanctions imposed.

IT IS FURTHER ORDERED remanding this matter back to the Peoria Court for further proceedings.

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<sup>1</sup> *State v. Guerra*, 161 Ariz. 289, 778 P.2d 1185 (1989); *State v. Mincey*, 141 Ariz. 425, 687 P.2d 1180, cert.denied, 469 U.S. 1040, 105 S.Ct. 521, 83 L.Ed.2d 409 (1984); *State v. Brown*, 125 Ariz. 160, 608 P.2d 299 (1980); *Hollis v. Industrial Commission*, 94 Ariz. 113, 382 P.2d 226 (1963).

<sup>2</sup> *State v. Guerra*, supra; *State v. Tison*, 129 Ariz. 546, 633 P.2d 355 (1981), cert.denied, 459 U.S. 882, 103 S.Ct. 180, 74 L.Ed.2d 147 (1982).

<sup>3</sup> *State v. Guerra*, supra; *State v. Girdler*, 138 Ariz. 482, 675 P.2d 1301 (1983), cert.denied, 467 U.S. 1244, 104 S.Ct. 3519, 82 L.Ed.2d 826 (1984).

<sup>4</sup> In re: Estate of Shumway, 197 Ariz. 57, 3 P.3rd 977, review granted in part, opinion vacated in part 9 P.3rd 1062; *Ryder v. Leach*, 3 Ariz. 129, 77P. 490 (1889).

<sup>5</sup> *Hutcherson v. City of Phoenix*, 192 Ariz. 51, 961 P.2d 449 (1998); *State v. Guerra*, supra; *State ex rel. Herman v. Schaffer*, 110 Ariz. 91, 515 P.2d 593 (1973).

<sup>6</sup> Supra.

<sup>7</sup> Id. At 553, 633 P.2d at 362.